

primary reference. Moreover, in many cases the Patent Office fails to provide findings supported with technical underpinnings as to why a person of ordinary skill in the art would combine the asserted references.

For example, independent claim 1 requires a pair of spaced apart end flanges extending from each end portion in a direction generally normal to the projection. The Patent Office correctly observes that Soucy, the primary reference, does not teach the pair of end flanges as the claim requires. However, the Patent Office asserts that Pellock (US Patent No. 6,393,794), a new reference in the case, teaches a pair of spaced apart end flanges. The obviousness analysis with regard to claim 1 ends at this point in the Office Action. There is no finding articulated in the Office Action as to how the missing elements allegedly found in Pellock would be incorporated into Soucy. There is likewise no reasoning proffered under which an ordinarily skilled artisan, faced only with the teachings of Soucy and Pellock, would be inclined to somehow modify Soucy with the purported end flanges of Pellock. Hence, traversal of the obviousness rejection is not possible.

The same deficiencies in obviousness analysis appear throughout the Office Action. Applicants are consequently provided no indication as to how the Patent Office proposes to modify the primary reference. Likewise, no technical reasons or underpinning for incorporating secondary teachings into the primary reference are provided in the Office Action.

In some instances the Patent Office proffers a supposed motivation. For example independent claim 7 requires first and second projections wherein each projection includes a locking surface and a stop and wherein when interlocked, the locking surface of each projection engages the stop of the other projection. The Patent Office observes that Soucy does not teach the claimed structure, and recites features of the Cubbler structure that purportedly include the claimed elements. Then, in a merely conclusory manner, the Patent Office states that it would have been obvious to one of ordinary skill to modify Soucy with the alternative securing means

of Cubbler in order to provide a more secure attachment between adjacent spacers of Soucy. However, the Office Action contains no description whatsoever as to how tongue portion 42, for example, of Cubbler would be incorporated into the brace of Soucy. Applicant is faced with having to speculate how the Patent Office proposes that the Cobbler teachings would be applied to the Soucy brace, no factual basis having been provided in the Office Action. Traversal of this rejection is accordingly impossible.

It is incumbent upon the Patent Office, in asserting obviousness rejections, to engage in a claim-by-claim obviousness analysis. That is each claim must be analyzed for obviousness. This analysis in each case includes three essential factual determinations:

1. the difference between the claimed invention and the primary reference;
2. how the secondary teachings are to be incorporated into the primary reference;
and
3. reasoning that goes beyond conclusory statements and that have sound technical basis as to why an ordinarily skilled artisan would modify the primary reference in the first place.

Respectfully, the Office Action fails in making these three essential factual determinations for each rejection in the case.

With respect to the structures identified by the Patent Office as end flanges in Pellock, under no circumstances can these structures be termed “end flanges.” It is unclear as to what construction of the claim term “end flange” was made by the Patent Office. However, there can be no reasonable construction of the claim term “end flanges” so broad as to encompass the structure of Pellock. In the context of structural components for buildings, the definition of the term “flange” is clear. A flange is a stiffening extension associated with a structure that is generally perpendicular to the structure from which it immediately extends. A standard dictionary definition of a flange is “a broad ridge ... projecting from the edge of a rolled metal shape generally at right angles, in order to strengthen or stiffen it.” Applicants’ specification clearly describes the end flanges as extending normal to the spacer.¹ An ordinarily skilled artisan in the field of light metal building design construction, would understand that a flange is a reinforcing structure extending normal from its immediate parent structure as a side flange is to a channel beam, for example. The Patent Office asserts that the combination of edge portion 54 and ledge 56, from which the edge portion commences, together comprise an end flange in Pellock. Combined edge portion 54 and ledge 56 merely comprise a slightly angled edge that serves as a guide or cam for guiding a truss cord portion into a receiver in order to engage the Pellock truss brace with a truss structure. Triangular end portion 54/56 is not normal to leg 30 from which it immediately extends; it is co-planar therewith.

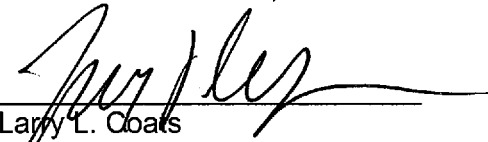
The issues in this case have been extensively argued. Applicants understand the Patent Office’s position and believe that the Patent Office appreciates Applicants’ position. Respectfully, if this response does not place the present application in condition for allowance, Applicants intend to appeal to the Patent Office Board of Appeals and Interferences. This statement is not meant to be menacing, unprofessional or disrespectful of the Patent Office’s

position. To the contrary, it is intended to avoid the Applicants going to the expense of preparing an appeal brief and having the Patent Office withdraw the final rejection and issuing a new office action after the first appeal brief has been filed. Unfortunately this happens too often and if both the Applicants and the Patent Office seriously consider their position at this juncture of the prosecution, this can be avoided. In this case the Applicants cannot financially afford multiple appeal briefs. Therefore the Applicants respectfully request the Patent Office to evaluate its case and if the rejections are not strong enough for appeal, to withdraw the final rejection at this time and issue a new office action so the issues can be dealt with at this time and not after the Applicants have gone to the expense of an appeal brief. Applicants believe that the present application is in condition for allowance, but if the Patent Office maintains its rejections, the Patent Office is respectfully urged to indicate to the Applicants that it is comfortable with its position and that it will not withdraw the final rejection after an appeal brief is filed. The time and consideration of the Patent Office is appreciated.

Although no fees should be required for this response, if any are, please charge them to Coats & Bennett Deposit Account No. 18-1167.

Respectfully submitted,

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